(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Criminal Appeal No. 522/2002

Appellants : 1. Ramnarayan @ Ballu,
S/o Samelal,
Aged about 23 years,
2. Ramshankar @ Nanka,
S/o Smelal,
Aged about 27 years,
3. Samelal, S/o Bhangi Kurmi,
aged about 62 years,
All are resident of village Pauna,
P.S. Pamgarh Distt. Janjgir-Champa (C.G.)

Accuseds
(In jail)

1235
Filed on 18-3-02
by Shri Sanjay Agrawal Advocate
R. to D.R. (J)

VERSUS

Respondent : State of Chhattisgarh
Through P.S. Pamgarh,
Distt. - Jajgir-Champa (C.G.)

Appeal u/s 374 of The Code of Criminal Procedure.

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(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App. 322/02 **सन् 200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -HON'BLE MR. L.C. BHADOO AND HON'BLE MR. SUNIL SINHA, JJ.

08.07.2005

Miss Sharmila Singhai, counsel for the appellants.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral.

During the course of hearing on M.Cr.P. No.959/2005 learned counsel for the accused/appellants submitted that she is ready for final hearing, to which State counsel has no objection. Therefore, the appeal is taken up for final disposal.

The accused/appellant has questioned the legality of judgment of conviction and sentence dated 30th January, 2002, passed by learned Additional Sessions Judge, Janjgir in Sessions Trial No.164/2000, whereby learned Additional Sessions Judge after holding the accused/ appellants guilty for commission of offence under Section 302 of the I.P.C., in the alternative under Section 302 read with Section 34 of the IPC, sentenced them to undergo imprisonment for life and to pay fine of Rs.200/-, in default of payment of fine to further undergo S.I. for two months. Accused/appellant No.1-Ramanarayan @ Balloo was also held guilty for commission of offence under Section 307 of the IPC and sentenced him to undergo R.I. for 07 years and to pay fine of Rs.200/-, in default of payment of fine to further under S.I. for one month. However, accused/appellants Ramshankar @ Nanke & Samelal were acquitted under Sections 307 read with Section 34 &

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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326 of the IPC and no finding for commission of offence under Section 326 of the IPC with respect to accused Ramnarayan @ Ballu was recorded.

The prosecution story, in brief, relevant for disposal of this criminal appeal is that on 31.1.2000 deceased Sadhuram and his son, namely Puneet Ram were at their agricultural field and they were irrigating their field and doing other agricultural activities, at that time the accused/appellants came there and asked deceased Sahduram, why they had stopped the flow of water which was coming towards their field, on which Sadhuram replied that ~~since~~ he they do not have sufficient water in order to irrigate their field, therefore, they have stopped the flow of water towards their field. Thereafter, some hot exchange of words took place between the parties, accused/appellant Ramanarayan @ Balloo attacked deceased on his head with a spade, other accused/appellants had also assaulted with lathi, as a result of which Sadhuram died on the spot. The matter was reported to the Police Station Pamgarh at about 8.00 a.m., on receiving report the Station House Officer, Police Station Pamgarh registered the case and took up the investigation. After completion of investigation charge sheet was filed against the accused/appellants in the court of learned Judicial Magistrate First Class, Janjgir, who committed the case for trial to learned Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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Learned Additional Sessions Judge after hearing Additional Public Prosecutor, counsel for the accused/appellants and perusal of record was of the view that prima-facie charges under Section 302 in the alternative Section 302 read with Section 34 of the IPC and Section 307 in the alternative Section 326 of IPC are made out. Accordingly, he framed the charges and read over to the accused/appellants, however, the accused/appellants denied the charges and claimed to be tried.

The prosecution in order to prove the offence against the accused/appellants examined as many as 17 witnesses. Learned Additional Sessions Judge recorded the statements of the accused/appellants under Section 313 of the Cr.P.C. in which they simply denied the prosecution case, and in the end, they stated that the prosecution witnesses are false and they have been implicated in a false case. The accused/appellants also examined three witnesses in defence.

Learned Additional Sessions Judge after hearing the arguments of counsel for accused/appellants, Additional Public Prosecutor and placing reliance on the evidence of witnesses namely Puneet Ram (PW-2), Rameshwar (PW-9) & medical evidence convicted the accused/appellants and sentenced them in the manner mentioned above.

We have heard learned counsel for the appellants and learned Panel Lawyer on behalf of the State/respondent.

खिये)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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As far as the question of nature of death of Sadhuram being concerned as homicidal, same has not been disputed by learned counsel for the accused/appellants. Dr. D.C. Choudhary (PW-7), who conducted the post mortem examination on the body of deceased, has stated in his evidence that on 31.1.2000 he was posted as Medical Officer In-Charge of Primary Health Centre, Pamgarh, on that day on the request of the Police Station Pamgarh he conducted postmortem on the body of deceased Sadhuram and found that there was one incised wound on the left parietal region in the size of 4x½x1 cm deep upto bone; a depressed fracture and; a bruise on the right knee in the size of 2x1 cm. After examination he prepared post mortem report (Ex.P-7) and opined that cause of death was shock due to haemorrhage and injuries on the vital organs. The Doctor (PW-7) has further stated that on the same day he also examined the injuries of Puneet Ram-son of deceased and found that there was one lacerated wound on the left parietal region in the size of 6x½x1 cm. In view of the above medical evidence, it stands proved that the death of deceased Sadhuram was homicidal in nature.

Now, coming to the involvement of accused/appellants in the crime in question, learned counsel for accused/appellants very fairly submits that she does not want to argue on the merit of the case. However, she submitted that on the facts and circumstances of the case, offence under Sections 302 & 307 of the I.P.C. were not

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —57—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

made out and only offence under Section 304 Part-II of the I.P.C. was made out.

We have perused the evidence of Puneet Ram (PW-2), who is the son of deceased as also an injured witness and at the relevant time he was working at the agricultural field with his father. He has stated in his evidence that as there was paucity of water in his agricultural field, therefore, he stopped the flow of water towards the accused/appellants' field, on this the accused/appellants objected and thereafter, accused/appellant Samelal came with a lathi and assaulted his father, when he tried to intervene and asked that why his father is being assaulted then accused/appellant No.1 Ramnarayan @ Ballu came with spade and assaulted him, as a result of which he fell down on the earth. Thereafter, accused/appellant Ramnarayan assaulted his father Sadhuram also with the same spade on his head. Accused/appellants Ramshankar @ Nanka and Samelal also assaulted his father with lathi. Similarly, other witness namely Rameshwar (PW-9) has also corroborated the evidence of this witness (PW-2) and in cross-examination the defence counsel could not elicit any fact, which makes the evidence of these witnesses unreliable or untrustworthy.

After considering the above evidence, we are of the opinion that the finding of learned trial court regarding causing fatal injury by spade by accused/appellant No.1 is correct, as the same is based on legal evidence and we do not find any infirmity or illegality in the finding.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as the question of involvement of accused Ramshankar & Samelal is concerned, from the evidence of PW-2 Puneet Ram & PW-9 Rameshwar it cannot be held that accused/appellants Ramshankar & Samelal were sharing common intention with accused/appellant Ramnarayan @ Ballu for assaulting Sadhuram to cause his death. However, from the evidence of above witnesses, it is amply established that at the spur of moment some hot exchange of words took place between the parties, as the son of deceased Sadhuram namely Puneet Ram stopped the flow of water towards the agricultural field of the accused persons. As per the evidence, in the first instance, Samelal assaulted Sadhuram with the lathi, when Puneet Ram tried to intervene, accused/appellant Ramnarayan inflicted injury with a spade on his head, as a result of which he fell down on the earth and thereafter, accused Ramnarayan inflicted injury with the spade on the head of his father Sadhuram. Therefore, in the circumstances, it cannot be held that all the three accused persons, particularly; Ramshankar & Samelal were having or sharing common intention with accused Ramnarayan to assault the deceased with the deadly weapon like spade. As such, the finding of the trial court regarding sharing common intention by accused Ramshankar @ Nanke & Samelal with respect to fatal injury is not proved, therefore, accused/appellants Ram Shankar @ Nanke & Samelal have wrongly been convicted by the trial court for commission of offence under Section 302/34 of the IPC. However, as per evidence of PW-2 Puneet Ram & PW-9 Rameshwar the offence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

under Section 323 of the IPC is clearly made out against them, as they assaulted deceased Sadhuram with lathi.

Now coming to the question regarding conviction of accused No.1 Ramnarayan @ Ballu under Section 302 of the IPC, as has been discussed above that when Puneet Ram stopped flow of water towards the agricultural field of the accused/appellants they objected to it and in that process some hot words were exchanged between the parties. Thereafter, accused/appellant Ramnarayan @ Ballu all of a sudden inflicted injury with a spade on the head of deceased Sadhuram. There is nothing in the evidence which goes to show that Ramnarayan attacked the deceased with pre-meditation or pre-planned or with an intention to cause his death, on the contrary, it is evident from the evidence that accused Ramnarayan inflicted injury on the head of deceased Sadhuram without pre-meditation in a sudden fight in the heat of passion on the spur of moment without taking any undue advantage or acted in a cruel or unusual manner. Therefore, we are of the considered opinion that the act of accused/appellant is squarely covered under Exception-IV to Section 300 of the I.P.C. and the act of accused Ramnaraya @ Ballu falls under the category of culpable homicide not amounting to murder. In the circumstances, we are of the opinion that offence under Section 304 Part-II of the I.P.C. was made out against the accused/appellant No.1 for which 7 years rigorous imprisonment is sufficient to meet the ends of justice.

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मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

For the above view, we are supported by following judgments of the Hon'ble Apex Court. In the matter of **State of Rajasthan vs. Satyanarayan** reported in **1998 (1) Supreme 433** the facts of case were that accused Satyanarayan was neighbour of Bhima. Some quarrel took place between Bhoridevi, wife of Bhima and the accused and there was exchange of words between her and accused Satyanarayan. In that process the accused assaulted Bhoridevi with an iron pipe. He also injured Ram Gopal and then went back to his house. By that time Kesar Lal (deceased), brother of Bhima, went near the house of accused and started questioning the accused as to why he was quarrelling like that in the morning. Thereupon the accused came out of his house with a knife and inflicted a blow on the abdomen of Kesar Lal as a result of which his intestines came out and he died. The accused ran away from that place. On these facts, the Hon'ble Apex Court held that the respondent had not aimed the blow on any vital part of Ram Gopal or Kesar Lal. The blow was aimed at Ram Gopal but as he moved aside, it landed on the stomach of Kesar Lal. Therefore, the Court held that the appellant should have been convicted under Section 304 Part-I of the I.P.C. and not under Section 302.

Similarly, the prosecution case in the matter of **Mahesh vs. State of Madhya Pradesh** reported in **1996 (6) Supreme Cases 609** was that the deceased objected to the appellant not let his cattle damage the crop. The appellant, however, did not pay any heed to the request of the deceased and insisted that he would graze

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश-क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the cattle in that field and altercation ensued between the deceased and the accused. In that process the appellant dealt a pharsa blow on the head of the deceased Krishna Kumar as a result of which he died on the spot. On these facts Hon'ble Apex Court held that in these circumstances, the accused during a sudden quarrel without any premeditation assaulted the deceased therefore the offence will fall within Exception-4 to Section 300 of the I.P.C. therefore the accused was held guilty under Section 304 Part I of the I.P.C.

As far as the conviction of accused/appellant Ramnarayan @ Ballu under Section 307 of IPC is concerned, from the evidence of PW-2 Puneet Ram, which has been referred above, it cannot be held that accused Ramnarayan attacked Puneet Ram with an intention or knowledge to cause his death, as when exchange of hot words took place between them on the question of stopping of flow of water to the field of the accused/appellants, Ramnarayan all of a sudden in a spur of moment assaulted Puneet Ram on his head with the spade, as a result of which he received a fracture injury on his head, which is evident from the medical report Ex.P-8 and opinion of doctor Ex.P-9. The injury was found to be grievous in nature and same was caused with hard and blunt object, as such we are of the considered opinion that offence under Section 307 of the IPC was not made out against the accused/appellant Ramnarayan, however, on the evidence and circumstances, by inflicting grievous injury on the head of Puneet Ram accused Ramnarayan voluntarily caused

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

grievous hurt, therefore, he committed offence under Section 325 of IPC.

In the result, the appeal is partly allowed. The conviction and sentence of accused/ appellants under Section 302 of the I.P.C. in the alternative Section 302 read with Section 34 are set aside, instead thereof, accused/appellant No.1 Ramnarayan @ Ballu is convicted for commission of offence under Section 304 Part-II of I.P.C. and sentenced to undergo imprisonment for 07 years and to pay fine of Rs.200/-, in default of payment of fine to undergo S.I. for 1 month. The conviction & sentence under Section 307 of IPC are also set aside instead thereof accused/appellant No.1 Ramnarayan is convicted under Section 325 of IPC and sentenced to undergo R.I. for 5 years and to pay fine of Rs.200/, in default of payment of fine to undergo S.I. for 1 month. Both the sentences are directed to run concurrently.

Accused/appellant Nos.2 & 3 namely Ramshankar @ Nanka & Samelal are convicted for commission of offence under Section 323 of the IPC and sentenced to undergo R.I. for three months. Accused/appellant No.1 Ramnarayan @ Ballu is entitled for set-off under Section 428 of the Cr.P.C. for the period for which he remained in Police and judicial custody during the investigation and trial. Since accused/appellants No. 2 & 3 have already undergone three months sentence, therefore, there is no need to surrender and their bail bonds are cancelled.

Consequently, M.Cr.P. No.959/05 also stands disposed of.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Roshan/-

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